

WEDNESDAY, JULY 11, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m. with Chairman Parrish, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Burger Basket, Inc., SR EA 13-864556; 56261

10-1-96 to 3-31-99, \$9,733.46 Tax

For Petitioner:

Fayez Genadry, Bookkeeper

Bill J. Soteropulos, Manager

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the transferee assumed liabilities during the transfer of the Fontana restaurant.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Faramarz Bibayan, SR AC 13-849592; 37294

7-1-95 to 9-30-98, \$7,578.01 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Action: The Board took no action.

Fereydoun Saidi & Hussein Saidi, SR AB 23-797091; 41193

1-1-96 to 3-31-98, \$3,012.33 Tax

For Petitioner:

Sayed H. Saidi, Partner

For Sales and Use Tax Department:

Jeffery Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether sufficient evidence was provided to show that a certain disallowed claimed sale in interstate commerce was valid.

Whether sufficient evidence was provided to show that petitioner is entitled to additional credits for bad debts.

Alternatively, whether petitioner is entitled to relief from the liability under Revenue and Taxation Code section 6596.

WEDNESDAY, JULY 11, 2001

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mary Ann Cambron, SB UT 82-665422; 33447

8-31-98, \$10,725.00 Tax

For Petitioner: Mary Ann Cambron

For Sales and Use Tax Department: Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the facts prove that the vessel was not purchased for use in this state.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

LEGAL APPEALS MATTERS – ADJUDICATORY

Oracle Corporation, SR Y BHA 026-705155; 89000652330

7-1-89 to 12-31-92, \$941,563.24 Tax, \$94,156.28 Penalty, Negligence

Considered by the Board: Hearing Notice Sent – Appearance Waived

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish, unanimously carried, Mr. Parrish and Mr. Klehs voting yes, Mr. Chiang abstaining, Mr. Andal and Ms. Mandel not participating, the Board ordered to adopt the revised recommendation of the Appeals Section.

BUSINESS TAXES APPEALS HEARING

Faina Geller, SR AC 99-161350; 89002127880

1-1-95 to 2-28-97, \$15,609.88, \$00.00 Penalty, Negligence

Precision Coach Craft, Inc., SR AC 97-084650; 89002053020

3-1-97 to 9-30-98, \$13,299.65 Tax, \$1,329.97 Penalty, Negligence

For Petitioner: Faina Geller

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

WEDNESDAY, JULY 11, 2001

Issue: Whether the understatement of taxable sales has been established in accordance with the facts.

Whether the lack of written notification to PCC to provide its books and records for audit warranted deletion of the determined tax.

Whether insolvency of PCC warrants relief from the tax.

Whether relief from the penalty for negligence is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Faina Geller, SR AC 99-161350; 89002127880*, be submitted for decision.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Precision Coach Craft, Inc., SR AC 97-084650; 89002053020*, be redetermined as recommended by the Appeals Section.

Diamond Design and Manufacturing, Inc., SR EA 97-287049; 33971
10-1-97 to 8-31-98, \$20,696.54 Tax, \$00.00 Penalty

For Petitioner: Georgia Cervantis, CEO
Mohamad Itani, Witness

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether petitioner qualifies as a successor to Diamond Obsessions, Inc.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section. The Board directed staff to collect from the predecessor, establishing a two-year payment plan and deleting the finality penalty. If at any time the predecessor fails to pay, the finality penalty will be reestablished.

RT Lawrence Corporation, SR AA 99-685836; 41896
4-1-95 to 3-31-98, \$5,887.15 Tax

For Petitioner: Kenneth A. Carroll, CPA

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that the disallowed implementation charges were for nontaxable services not related to the sale of tangible personal property.

WEDNESDAY, JULY 11, 2001

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

ARB, Inc., SR EAA 22-074088; 78057

7-1-96 to 6-30-99, \$00.00 Tax, \$28,425.67 Penalty, Negligence

For Petitioner: Suzanne Beaudelaire, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether relief from the negligence penalty is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:00 a.m. and reconvened at 1:55 p.m. with Mr. Parrish, Mr. Chiang and Ms. Mandel present.

BUSINESS TAXES APPEALS HEARING

Lee-John Sobering, SR AS 99-401008; 89002235300

10-1-93 to 12-31-96, \$30,368.56 Tax, \$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Warren Astleford, Counsel

Action: The Board took no action.

Bernard Gregory Ross & Ronald Eric McMillan, SR AS 11-813619; 89000035410

10-1-94 to 12-31-96, \$43,985.62 Tax, \$00.00 Penalty, Negligence

For Petitioner: Bernard Ross

For Sales and Use Tax Department: Jeffery Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that the disallowed sales qualify as exempt sales in interstate commerce.

Alternatively, whether the evidence shows that the disallowed sales qualify as exempt sales of printed sales messages.

Whether petitioner Bernard Ross should be relieved of the tax liability.

WEDNESDAY, JULY 11, 2001

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Harry Soukiassian, SY AB 12-715059; 8900049350

4-1-93 to 3-31-96, \$29,882.20 Tax, \$2,988.22 Penalty, Negligence

For Petitioner:

Harry Soukiassian

Sheldon I. Lodmer, Attorney

Eva Garibian, Accountant

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner has met the burden of proving that the Sales and Use Tax Department's determination of the measure of tax is erroneous by providing evidence from which a more accurate determination may be made.

Whether relief from the 10 percent penalty for negligence is warranted.

Action: (Motion Expunged).

Upon the motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that its previous motion granting the Department 30 days to review additional information and the Appeals Section 30 days to prepare a recommendation for the Board be expunged.

Upon the motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision; granting the Department 30 days to review additional documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation

Allen's Automotive, Inc., SR AC 13-816987; 89000082560

7-1-94 to 6-30-97, \$46,138.46 Tax, \$4,613.86 Penalty, Negligence

For Petitioner:

Solak Avedissian, Tax Preparer

Ali Attabi, President

For Sales and Use Tax Department:

Rich Goodrich, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the understatement of taxable sales was established in accordance with the facts.

WEDNESDAY, JULY 11, 2001

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Jorge Luis Odar, SX AC 13-870839; 89000095620

10-1-90 to 12-31-95, \$153,874.47 Tax, \$38,468.73 Penalty, Fraud

For Petitioner: Luis Ramirez, Accountant/Notary Public
Jorge Luis Odar

For Sales and Use Tax Department: Rich Goodrich, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that approximately 40 percent of the lump-sum selling price of tires should be allowed as exempt labor charges.

Whether petitioner's allegation that the use of bank deposits to establish audited taxable sales is an inappropriate auditing method because petitioner was purchasing tires for other tire stores warrants a reduction to the audit liability.

Whether the evidence shows that the audited measure of tax is excessive.

Whether the evidence shows that the audited allowance for unsaleable tires should be increased.

Whether relief from the penalty for fraud or intent to evade the tax is warranted.

Whether petitioner's compromise offer warrants a reduction to the audit liability.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Carlos Humberto Odar, SY AC 13-886806; 89000100170

4-1-93 to 12-31-95, \$00.00 Tax, \$7,632.06 Penalty, Fraud

For Petitioner: Carlos Humberto Odar
Hernan Mosquera, Accountant

For Sales and Use Tax Department: Rich Goodrich, Hearing Representative
Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether imposition of the 25 percent penalty for fraud is appropriate.

Whether relief from the interest is warranted.

WEDNESDAY, JULY 11, 2001

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Spintex Company, Inc., SR AR 13-631029; 79763

1-1-97 to 3-19-99, \$21,993.31 Tax, \$00.00 Penalty, Finality

For Petitioner: Gene Wechsler, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that certain items of computer equipment were not sold and, therefore, should be excluded from the sales price of the fixtures and equipment.

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Farla Binder, SR AC 13-719009; 89000068610

1-1-95 to 3-31-98, \$69,753.06 Tax, \$6,975.39 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

The Board recessed at 3:50 p.m. and reconvened at 3:55 p.m. with Mr. Parrish, Mr. Chiang and Ms. Mandel present.

FINAL ACTION ON PETITIONS HEARD JULY 11, 2001

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Allen's Automotive, Inc.*, SR AC 13-816987; 89000082560, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Jorge Luis Odar*, SX AC 13-870839; 89000095620, be redetermined as recommended by the Appeals Section directing staff to offer a generous 24-month payment plan.

WEDNESDAY, JULY 11, 2001

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Carlos Humberto Odar, SY AC 13-886806; 89000100170*, be redetermined as recommended by the Appeals Section directing staff to offer a generous 24-month payment plan.

Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang and Ms. Mandel voting yes, Mr. Klehs and Mr. Andal absent, the Board ordered that the petition of *Spintex Company, Inc., SR AR 13-631029; 79763*, be redetermined as recommended by the Appeals Section.

The Board adjourned at 4:05 p.m.

The foregoing minutes are adopted by the Board on September 13, 2001.